ECJ Rules on Set-Off and Exequatur

On October 13th, 2011, the European Court of Justice held in Prism Investments BV v. Jaap Anne van der Meer (Case C-139/10) that enforcing courts may not deny exequatur to foreign judgments on the ground that they were already paid by way of set-off.

Facts

In a nutshell, a Dutch company, Arilco Holland, had transfered monies (Euro 1 million) to a Dutch investment company, Prism Investment BV. Several companies of the Arilco group had originally received the monies from a Finish bank. When they were sued in Belgium to reimburse the monies, Arilco asked in turn Prism Investment to return the million it had received.

In 2006, the Court of appeal of Brussels ordered Prism to pay Arilco Holland the said million. In August 2007, Arilco Holland was declared isolvent. In September 2007, the trustee sought and obtained that the Belgian judgment be declared enforceable in Holland. Prism appealed the declaration of enforceablity on the ground that it had already paid the jugdment by way of set-off in Belgium.

The ECJ's Decision

The ECJ held that declarations of enforceability may only be challenged on the grounds provided by the Brussels I Regulation.

> *Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.*

Payment of the judgment in the state of origin is not one of those grounds:

34 In the present case, it is apparent from the order for reference that the ground for revocation of the declaration of enforceability relied upon by the appellant in the main proceedings and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review. The fact that that ground was not raised before the Belgian court is irrelevant in that regard.

Although this does not seem to have been central to the decision, the court found interesting to underscore that the set-off was actually disputed:

35 Furthermore, as the Advocate General has noted in point 47 of her Opinion, the argument of the appellant in the main proceedings against the declaration of enforceability is derived from the alleged satisfaction of the claim at issue by means of a financial settlement. However, in his written observations, Mr van der Meer, acting in his capacity as receiver in the liquidation of Arilco Holland, challenges that financial settlement in detail. The answer to the question whether or not the requirements of that financial settlement were fulfilled will therefore be neither straightforward nor swift and could require an extensive examination of the facts regarding the claim in relation to which that financial settlement may have been reached and would thus be difficult to reconcile with the objectives pursued by Regulation No 44/2001.

It was thus for the courts of the enforcing state to rule, at a a later stage, on the issue:

40 Such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (see Case 148/84 Deutsche Genossenschaftsbank [1985] ECR 1981, paragraph 18; Case 119/84 Capelloni and Aquilini [1985] ECR 3147, paragraph 16; and Hoffmann, paragraph 27).